

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IRON WORKERS LOCAL 25 PENSION FUND,
et al.,

Plaintiffs,

v.

Case No. 07-CV-11769-DT

MUNICIPAL AND INDUSTRIAL STORAGE,
INC., et al.,

Defendants.

ORDER DIRECTING A RESPONSE

Pending before the court is Plaintiffs' "Motion to Reopen Case for Entry of Consent Judgment," filed on October 1, 2007. For the reasons stated below, the court will direct Defendants that, if they wish to submit a response, they must do so on or before October 15, 2007, or the court will enter judgment against them and in Plaintiffs' favor as detailed below.

I. BACKGROUND

On April 23, 2007 Plaintiffs filed suit against Defendants alleging that Defendants breached their obligation to make certain fringe benefit contributions to Plaintiffs under the parties' collective bargaining agreement. (*See generally* Pls.' Compl.)

On July 19, 2007 the parties stipulated to a dismissal "pursuant to the terms and conditions of a Payment Agreement which is adopted by reference as if fully stated herein, to dismiss this matter with prejudice and without costs." (7/19/07 Stipulated Order of Dismissal at 2.) The order further stated that "if there is any violation of the

Payment Agreement any of the parties may move to reinstate Case No. 07-cv-11769 for purposes of entry of a final Judgment. The Court will retain jurisdiction for the purpose of enforcing the terms of the Payment Agreement.” (*Id.*)

On October 1, 2007 Plaintiffs filed their “Motion to Reopen Case for Entry of Consent Judgment.” Plaintiffs assert that, pursuant to the Payment Agreement, Defendants were obligated to make monthly installment payments of \$5,147.15 on the fifteenth of each month, beginning on July 15, 2007 and continuing through April 15, 2008. (Payment Agreement at 1, Pls.’ Mot. to Reopen Ex. A.) Plaintiffs maintain that Defendants made the July payment, but failed to make the August or September payments. (Pls.’ Mot. to Reopen at 2.)

The Payment Agreement provides that, upon breach of the agreement, Plaintiffs are authorized to move for a reinstatement of the case and entry of a consent judgment for the remaining balance due, which must be paid within five days of Defendants’ violation. (Payment Agreement at 2, Pls.’ Mot. to Reopen Ex. A.) Because Defendants have breached the agreement by failing to make two payments, Plaintiffs maintain that they are entitled to entry of a consent judgment in their favor in the amount of \$46,324.37, which represents the amount due under the Payment Agreement, less the one payment made, plus interest. (Pls.’ Mot. to Reopen at 3.)

II. DISCUSSION

Pursuant to the Payment Agreement, Defendants may object to entry of the judgment *only* if they disagree with the amount due and owing. (Payment Agreement at 2, Pls.’ Mot. to Reopen Ex. A.) Accordingly, the court will await a response from

Defendants, should Defendants wish to file a response.¹ In the event that Defendants do not file a response by the deadline set forth below, the court will enter judgment in favor of Plaintiffs and against Defendants in the amount of \$46,324.37, representing the amount due and owing under the parties' Payment Agreement.

III. CONCLUSION

IT IS ORDERED that, should Defendants wish to file a response to Plaintiffs' "Motion to Reopen Case for Entry of Consent Judgment," a response is due on or before **October 15, 2007**.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: October 9, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 9, 2007, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522

¹Defendants are not obligated to submit a response to Plaintiffs' motion.